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# THE PEACE CONFERENCE: ITS POSSIBLE PRACTICAL RESULTS.

BY A DIPLOMATIST AT THE HAGUE.

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EIGHT months have elapsed since the appearance of the circular of Count Muravieff, inviting governments to the discussion of measures for the securing of peace. The impression produced was so strong, every one was so struck by it, that for a long time no definite opinion was heard. Now the position has changed.

At first general attention was attracted by the humanitarian side of the circular. The unsatisfactory state of existing international relations had been recognized for centuries. Great thinkers and philosophers had tried to alleviate the evil; rulers and even conquerors had sympathized with them theoretically, but now for the first time the voice of a powerful monarch summoned them to the realization of the first step in the great enterprise. The friends of peace thrilled with joy. "Then the idea is not a dream," they said, "it can be realized."

As usual, the enthusiasm went too far. No Utopian plan of immediate abolition of war was entertained by the Russian proposals. To diminish the present armaments, or even only to arrest their further increase; to remove as far as possible the useless cruelty of war; to facilitate the peaceful solution of any rising disputes—these were the ends desired.

Circumstances promptly showed how prudent was this moderation. There is no need to discuss here whether universal peace and the abolition of war are possible or not, but even if they were, humanity at present is not ready for them.

The humanitarian side of the circular soon lost the importance that was at first attached to it; and more than that, it became in many cases a weapon in the hands of the opponents of the under-

taking. Its secret enemies delighted in talking loudly about it, in the hope that the realization of the proposed measures would thus be lost in words. Its open enemies put forward the axiom that fighting is an element of human nature, that war could not be abolished, and to try to accomplish its abolition would be beyond the sphere of practical politics or the functions of statesmen; it would be Utopia, the domain of dreams. So spake men of authority, whose opinion was of great weight. But "*tout le monde a plus d'esprit que M. Voltaire*," and the public and the press did not blindly follow them. They recognized the difficulties of the enterprise and the impossibility of accomplishing much at one stroke, but persisted in appreciating the humanitarian side of the Russian proposals, which is so captivating to all unprejudiced minds. In addition to this, they saw the practical side and understood that at least a part of the proposed measures not only could be fulfilled, but are absolutely necessary in the face of existing international relations. This sentiment brought about the opinion, expressed at first tentatively, but during the last months with full certainty, that the result of the conference can and ought to be the development of the principle of arbitration in cases of international disputes.

The arbitrating tribunals have also their enemies. Many see in them an attempt against the sacred right of man to fight. Arbitration, they say, cannot be taken seriously. To its province belongs no question of national honor, or integrity of territory. Any dispute which might lead to war can never be submitted to a tribunal, and the questions which can be submitted to it are those in which a recourse to arms would never be necessary. To try to abolish war by means of arbitration is a Utopian idea to which no serious meaning can be attached.

In order to discuss the practical problems of the conference, there is no need to refute such opinions. Without injuring its case one can even admit that they are perfectly sound. In consequence of the vastness of the armies of the great Powers and the perfection of modern weapons, war has become so serious a thing that recourse to it is only made on quite exceptional occasions. But international relations are not regulated only by such cases. Questions constantly arise of very great importance, though not involving the national honor or integrity of territory. They have arisen at all times, but they have never presented the gravity they

now do. There are two reasons for this. Formerly the questions were few, and were settled by a limited number of trained diplomats and statesmen. Now the course of the life of nations has completely changed; international intercourse becomes more and more frequent and complicated; disputes arise more often, and, in their settlement, the whole nation, so to say—as represented by Parliament, meetings, press and even enterprising private men—takes part. The quietude of Cabinet negotiations is replaced by the clamor of public discussions. Is that for good or evil? It is difficult to say. The defenders of the new order of things affirm that the people are the best protectors of their own interests. It may be so, but such discussion by the masses contributes without any doubt to the arousing of passions, impedes the peaceful settlement of disputes, and causes a disturbance of friendly relations through what may have been at first only a paltry misunderstanding. Generally, it does not lead to war; but it usually unsettles for a long time the regular current of economical, commercial and political intercourse. Under unfavorable circumstances, the excitement can even turn a question of mere material interests into one of national honor, which will end in a recourse to arms.

This side of public discussion is unavoidable, and the wisdom of statesmen must consist not in deploring the past, or in sterile attempts to return to it, but in grasping the new situation and satisfying its exigencies. The new state of international relations requires a new instrument to regulate it. Such an instrument must be a regularly constituted international tribunal.

But, it might be replied, arbitrating tribunals already exist. From 1815, there have been more than 130 cases submitted to them. Let them work as before; the Conference has nothing to do here.

The answer is easy, because all students of the question know the deficiencies of the present arbitrating tribunals.

They are always freshly appointed for each individual case. When a misunderstanding arises, recourse to arbitration always presents the greatest difficulties, even after the efforts of diplomacy to arrive at a settlement have been in vain. To many this method of arranging international disputes seems extraordinary, and even humiliating. When at last arbitration is decided upon, the appointment of the tribunal and the working out in each case of the mode of procedure occupy a long period of time, sometimes

years, during which period the relations between the disputants become so strained, that even when a satisfactory agreement is arrived at, a return to the normal state of affairs comes slowly. In short, the present tribunals are a heavy, bulky mechanism very difficult to set to work.

The arbitrators appointed for one single case are diverted from their usual occupations, and unavoidably consider the case submitted to them as something temporary and casual, and devote to it only a part of their time. This leads to tardiness of procedure and protractions which prejudice even the principle of arbitration.

The sense of justice is inherent in man, but impartiality is given to few; the development of it requires training and education of character. A private person deciding a case between a fellow countryman and a foreigner, is in most cases unable to discard national sympathies and inclines to the side of his compatriot. A professional judge in any civilized country is above such inclinations, and without hesitation decides against his countryman if he be in the wrong. In the present arbitrating tribunals, impartiality is expected only of the presiding umpire; the members of the court, appointed by each side, are usually advocates for their country. It would be difficult for them to be otherwise than partial. When an international dispute commences to agitate a country, the future possible arbitrators do not usually suspect what task awaits them; they take part in the agitation, and when appointed are already imbued with preconceived opinions, to rid themselves of which is always very difficult. One can say even more than that: not only is impartiality not expected of the arbitrators, but there is little doubt that the public opinion of a nation would severely condemn its representative, whose decision would be contrary to the interests of his country.

Very naturally, the above mentioned deficiencies, as well as some others of minor importance, lessen the authority of arbitration and limit its application.

The task of the Conference is to remove these deficiencies, and even if it accomplish nothing else, it will have done a great work. For that purpose it has to do away with the present casual character of the international tribunals. It is indispensable that the Powers should arrive at an agreement as to the institution of a *permanent* international court, to which, with the mutual consent of the two sides, the rising dispute could be referred.

This tribunal should be invested with the authority which ought to belong to an institution called upon to decide the disputes of nations. The members should be given a position identical with that of the greatest state dignitaries, and be chosen from among men of the highest morals, character and learning, well known to their own country and to other nations.

When once a permanent tribunal of such high authority exists, recourse to it will rapidly become a part of international morals; it will be quite natural to submit disputes to it which diplomacy is unable to settle. The false shame felt in referring to a tribunal will make way for a truer conception of things, and many cases in which prejudices are mistaken for national honor will be decided by the court. Only particularly important cases will form the exception.

There will be no more protractions resulting from a new appointment of a tribunal in each new case; rules of procedure will be established once for all, precedents and traditions will guide the court, no delays will take place in the hearing of the cases.

As to impartiality, the court will be under more favorable conditions than is now the case. In any dispute the greater part of the members will not be influenced by national interests; all of them being conscious of the sanctity of their task, and, trained by constant exercise of judicial functions, they will not allow themselves to submit to the influence of political passions.

It has been already mentioned that the permanent international tribunal would be referred to only by the mutual consent of the disputants. It is probably impossible at present for the Powers to arrive at a general agreement, binding them to have recourse to arbitration if only in certain classes of disputes. Such agreements between two countries have been made, but the opponents of obligatory arbitrating tribunals see in them the limitation of the sovereign rights of States. This argument can hardly be considered sound: the limitation in this case is not greater than in that of any international treaty, voluntarily concluded. But once such an opinion is found to exist, it must be taken into consideration.

But there is a second objection, which has a more secure foundation. To minor States obligatory arbitration will render possible, small judicial expenses only being risked, the raising of a number of claims which will conduce only to irritation, and will

aggravate the relations between States. The knowledge that arbitration can be refused and that then the claims would have to be supported by arms, would certainly prevent unfounded pretensions being put forward.

It is obvious that the permanent tribunal will not interfere with, but will facilitate, the conclusion of separate agreements between States, defining the class of dispute in which reference to the projected permanent tribunal will be obligatory.

The number of the members who shall constitute the tribunal is a very important matter. Will it consist of a limited number of judges, for instance, three or five, or will all the great Powers, and in some way the minor States, be represented? If governments could agree to nominate in rotation a limited number of members, that would be preferable. To insist upon the court always consisting of nominees of all the Powers would be a proof of mutual distrust. In such a court the interest of every participant would be represented, and, in consequence, there would be an involuntary tendency for the judges to be converted into advocates for their own countries. The unavoidable result would be the formation of political groups and combinations, which would have the worst possible influence on the authority of the tribunal.

The constitution of the permanent tribunal will raise many other questions of minor importance. To solve them will be the task of the Conference. The requisite materials will not be wanting. Numerous peace societies and their congresses, professors and men of science have dealt with everything concerning the functions and sphere of international courts.

Once the tribunal is resorted to, the broadest jurisdiction can be given to it. Governments can refer their cases to it, upon the understanding beforehand that its decision must be submitted to. That will be ordinary arbitration. Reference can also be made to it with no such obligation: then the court will become a kind of adviser or mediator, whose decision may in some cases be disregarded by the disputants. But such cases would be quite exceptional, and probably very rare, especially when the court consolidates its authority. The moral power of international institutions and agreements is very great. A proof of it we saw even last year during the war between the United States and Spain, when both countries, although not parties to the convention concerning privateering, decided to be guided by its stipulations.

The court, especially in the beginning, will take cognizance principally of cases of secondary importance, but with the increase of its authority its sphere of action will broaden, and on exceptionally grave occasions the number of its members, by the mutual consent of the parties concerned, could be increased by the addition of competent persons; and even a Sovereign or President of a Republic could be invited to assume the position of honorary umpire. Thus the permanent court, in accordance with circumstances, could, from a consulting body, rise to the importance of these solemn assemblies to which the decision of great international questions is confided.

The permanent court could, in the course of time, also undertake and guide the codification of international law. This problem is too vast and complicated to form part of the work of the Conference; it can only be dealt with by a permanent institution.

All that has been said about the jurisdiction of the proposed court shows that it does not interfere or come into collision with the present working of diplomatic relations; reference to the tribunal will take place only when diplomacy is unable to settle a dispute. To the province of diplomacy will also belong, as formerly, the mediation of a neutral State, or States, to which in some cases, before or after war, disputants have recourse. This mediation occupies quite a separate sphere, and in consequence of the importance of the interests involved, and the prudence required, is not subjected to any regulations.

To arrive at an agreement binding the Powers to have recourse to mediation before the commencement of hostilities would probably be impossible, the principal objection being, that the time necessary for mediation would be utilized by the unprepared side for completing its armaments.

All that has been said above shows that the institution of a permanent tribunal is not a Utopia. In the past it did not exist because there was no need for it. But formerly there were also no international bureaus at Berne, dealing with the telegraph, postal arrangements, railways and literary property, because from the international point of view these spheres of life did not exist at all or were in an embryo state. They appeared when the circumstances required them. The question of an international court is now in the same position. It is necessary, not for the definite abolition of war, but for the removing of irritating disputes,



which are so dangerous in view of the increasing frequency of international intercourse, and which, under unfavorable circumstances, could even lead to useless wars. When the tribunal attains its full growth, decision by arms will remain only for questions of real national honor, integrity of territory, or problems of such importance as the fate of decaying States or the change of the political status of whole continents. As an example of the latter could be quoted the last wars of Prussia with Austria and France, when the edifice of the Holy Roman Empire was replaced by the new German Empire. Such questions can scarcely be settled by a tribunal so long as the present conditions of life in the world are not radically changed.

The importance that was attached to the idea of international tribunals in the Russian proposals shows that its realization ought to form the principal task of the Hague Conference, and that this problem should be its first consideration.

At the Conference the Russian proposals will meet with many secret and open enemies. All of them will affirm that the ideas of the Czar are sublime, but that they are an Utopia of which humanity does not merit the realization. These tactics will become impossible if the work of the Conference is begun by discussing the creation of an international arbitrating tribunal, and by placing this problem, not on the humanitarian ground of abolishing war, but on the practical one of aiming to satisfy the actual, urgent necessity of improving international relations. In this case the opponents will be expected to bring forward other arguments, and there are none.

The solution of this principal question will facilitate the humanizing of war. The results of the Geneva and Brussels conferences are known, as well as the objections to extending the application of their stipulations; but the time has come to take a further step in the direction of their aims.

When satisfactory results on the two parts of the Russian proposals are reached, the atmosphere at the Hague will be cleared, and the ideas regarding what is Utopian, and what a practical measure, will undergo a complete change. Then the discussion concerning the reduction of armaments, or at least, the arresting of their progress, if only for a certain period of years, will not look so impossible of success as it seems now.

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